



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,538	06/10/2002	Thomas N. Masters	38151/203996	6926

826 7590 08/04/2003

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

[REDACTED] EXAMINER

TRAVERS, RUSSELL S

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1617

DATE MAILED: 08/04/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>10/088,538</b>	Applicant(s) <b>Thomas Masters</b>	
Examiner <b>R.S. Travers J.D., Ph.D.</b>	Art Unit <b>1617</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-10 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

Art Unit:

The information disclosure statement filed March 19, 2002 has been received and entered into the file.

Claims 1-10 are presented for examination.

Claims 6-10 are rejected under ~~35 U.S.C. § 112~~, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6-10 are rendered indefinite by the phrase "which extends the life of the heart" and thereby failing to clearly set forth the metes and bounds of the patent protection desired. Criteria defining those benefits envisioned are not clearly set forth in the instant claims or specification. The skilled artisan would not know if the desired benefit was increased time to reperfusion, reduction of microbial contamination, increase in the "service life" for this donated organ in the recipient, or that time until onset of graft versus host rejection problems. An organ removed for transplantation purposes is not capable of sustaining independent functionality, thus, is not alive. Absent limitations specifically setting forth the metes and bounds envisioned, Applicant's phrase fails to clearly define the subject matter encompassed by the instant claims, thus is properly rejected under 35 USC 112, second paragraph.

Art Unit:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by

Massoudy et al.

Massoudy et al teach the use of a Krebs-Henseleit buffer containing cyclosporin at an 0.8 micro molar concentration to effect cardio-protection in isolated hearts.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-10 are rejected under 35 U.S.C. § 103 as being unpatentable over Raymond (462), Jurado et al and Massoudy et al.

Art Unit:

Raymond (462), Jurado et al and Massoudy et al teach the claimed Krebs-Henseleit buffer as old and well known in combination with various pharmaceutical carriers and excipients in a dosage form. These medicaments are taught as useful for extending the physiological integrity of isolated organs to include hearts, as herein claimed. Claims 1-10, and the primary references, differ as to:

- 1) the concomitant employment of these medicaments, and
- 2) specific benefits residing in the administration of these medicaments.

It is generally considered prima facie obvious to combine compounds each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. As shown by the recited teachings, the instant claims define nothing more than the concomitant use of ingredients conventionally employed for extending the physiological integrity of isolated organs employed for transplantation. It would follow that the recited claims define prima facie obvious subject matter. Cf. In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

Claims 6-10 specifically requires the envisioned pharmaceutical composition to maintain the physiological integrity of organs removed for transplantation. Raymond (462), Jurado et al and Massoudy et al teach the claimed compound individually, and concomitantly as useful for providing this benefit, although not specifically reciting the

Art Unit:

benefit of extending "the life of the heart". The skilled artisan would have seen possessing the cardio-protective benefits taught by Raymond (462), Jurado et al and Massoudy et al as encompassing those benefits envisioned herein.

No claims are allowed.

Any inquiry concerning this communication should be directed to Russell Travers at telephone number (703) 308-4603.



**Russell Travers J.D., Ph.D.  
Primary Examiner  
Art Unit 1617**